

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
OFFICE OF STATEWIDE BROADBAND
MARYLAND BROADBAND INFRASTRUCTURE PROGRAM GRANT AGREEMENT**

FY2021

TABLE OF CONTENTS

AWARDEE: _____

AWARD ID#: _____

PROJECT NAME: _____

_____	Broadband Infrastructure Grant Agreement
_____	Exhibit A – Federal Funding Acknowledgment and Certification Regarding Use of Federal Funds for Lobbying
_____	Exhibit B – Broadband Grant Application Form
_____	Exhibit C – Project Budget
_____	Exhibit D – Other Public Funds
_____	Exhibit E – Project Map
_____	Exhibit F – Certification Regarding Exemption From Standard Minimum Network Requirements

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
OFFICE OF STATEWIDE BROADBAND
MARYLAND BROADBAND INFRASTRUCTURE PROGRAM GRANT AGREEMENT
Project/Capital Grant**

THIS BROADBAND INFRASTRUCTURE GRANT AGREEMENT ("Agreement") is entered into as of the Effective Date (as defined herein) by and between the DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (**"the Department"**), a principal department of the State of Maryland (**"State"**) and _____ (**"the Grantee"**). The Department and the Grantee are each a **"Party"** and may collectively be referred to as **"the Parties"**.

RECITALS

- A. This Agreement is issued pursuant to the State's appropriation in FY21 of funding received from the United States Department of the Treasury's Coronavirus State Fiscal Recovery Fund created by Section 9901 of the American Rescue Plan Act (**"the Act"**), to the Office of Statewide Broadband (**"the Office"**) and its Maryland Broadband Infrastructure Program (**"the Program"**).
- B. The purpose of the Program is to:
 - 1. Address the deficit of broadband resources available to serve rural residents and businesses in the State; and
 - 2. Provide financial assistance, in the form of grants and loans, to local governments and private providers for necessary improvements to broadband access, and projects aimed at overcoming infrastructure barriers to the expansion and availability of broadband resources in unserved and underserved areas.
- C. The purpose of the federal funding referenced above is to address the economic consequences of the COVID-19 pandemic by facilitating, among other things, necessary State investment in broadband infrastructure. The availability of these federal funds allows the Office to aid the Grantee by providing more financial investment than originally announced in the Request for Applications, and allowing the Grantee to provide a more reduced match than originally required in the Request for Applications. This federal funding is subject to any applicable rules, regulations, and guidance issued by the Treasury related thereto (**"the Regulations"**).
- D. In reliance upon the representations and certifications contained in Grantee's Fiscal Year 2021 Broadband Grant Application Form and the supporting documents submitted therewith (together **"the Application"**), the Department has approved an award of funds to Grantee to carry out a necessary Broadband Infrastructure project.
- E. The provisions of the Act, the Regulations, and the Office's Broadband Infrastructure Program Application Guide and Contracting and Procedures Guide, as amended from time to time (the **"Program Guides"**), are hereby incorporated into this Agreement as if fully restated herein.
- F. **"Effective Date"** means the date that this Agreement has been executed by the Department.

AGREEMENT

IN CONSIDERATION of the Recitals (which are incorporated herein by reference), the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Department and Grantee agree as follows:

1) Rural Area Designation.

- a) The Proposed Funded Service Area is located in an eligible geographic area that meets the definition of Rural Area as defined in Section 2-207(a)(7) of the State Finance and Procurement Article, Maryland Ann. Code.

2) Grant.

- a) In consideration of the various obligations to be undertaken by Grantee pursuant to this Agreement, the Department agrees to provide Grantee with funds in the amount of \$ _____ **Million Dollars (\$X,XXX,XXX.00)** (“**the Grant**”) to be used for the purposes of funding the Broadband Infrastructure Project (“**the Project**”) described in Exhibit B hereto (“**Broadband Grant Application Form**”), as well as in the remainder of the Application, the contents of which are hereby incorporated into Exhibit B by reference, as limited in scope by Exhibit E (“**the Project Map**”).
- b) Grantee shall use the Grant only for the approved Project and only in the approved Area. Grantee agrees that it will use the Grant and construct the Project in accordance with the provisions of the Guides and this Agreement.
- c) Funds provided by the Department under this Agreement shall not be used for operating expenses, including, not limited to: leases of any kind, the provision of customer devices (handsets, laptops, tablets, etc.), bandwidth and spectrum expenses, salaries and overhead not directly related to the construction of the broadband network. Funds also may not be used for the purchase or construction of towers, land, buildings, or for building renovations, tower upgrades, or the acquisition of facilities or companies.
- d) The Application may have referred to proposed projects in other jurisdictions other than the Project. The approval of the Application as to the Project, and the execution of this Agreement, are not to be construed as approval of any other proposals described in the Application.
- e) Grantee acknowledges that the Project must achieve Minimum Network Requirements. “**Minimum Network Requirements**” means a minimum internet connectivity of 100 Mbps down and 100 Mbps up with a maximum latency of 50 milliseconds measured at the served subscribers’ location, unless the ISP submits a Certification as to circumstances preventing the ISP from achieving such speeds. Where the ISP has certified to its need for exemption and said Certification is an Exhibit to this Agreement, Minimum Network Requirements shall mean a minimum internet connectivity that reliably meets or exceeds 100 Mbps download and at least 20 Mbps upload speeds, and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds based on future technology advances, with a maximum latency of 50 milliseconds measured at the served subscribers’ location.

3) Expenditure of Grant Funds.

- a) All Grant funds shall be expended on or before the Completion Date (as defined in Section 4(b) of this Agreement).
- b) Grantee shall expend the Grant in accordance with the budget set forth in Exhibit C (the “**Project Budget**”) and the “Eligible Grant Purposes” set forth in the Program Guides. Grant eligible expenses are capital expenses defined as expenses that are capitalized. All grant eligible capital expenditures must be for new, non-depreciated items and can include the construction of outside-plant deployment (including last mile and middle mile infrastructure), electronic equipment necessary to deliver service (including equipment shelters, wireless radio, and antenna), and other capital costs that are directly necessary to provide broadband service to the end user.

- c.) Grantee may not expend Grant Funds for purposes contrary to this Agreement, or for any purpose described under “Ineligible Grant Purposes” in the Program Guides. Grantee also may not expend more than the amount allocated for any category in the Project Budget without the prior written consent of the Office.
- d) Unless otherwise agreed to in writing by the Office, Grantee shall expend at least fifty percent (50%) of the Grant funds for the Project by the second (2nd) anniversary of the Effective Date.
- e) All costs incurred by Grantee before the Effective Date and before approval by the Department of the release of Grant funds are incurred voluntarily, at Grantee's risk and upon its own credit and expense, and Grantee's authority to be reimbursed from the Grant funds shall be governed by the provisions of this Agreement.
- f) If, upon completion of the Project, there are cost savings that result in unexpended Grant funds, Grantee shall return such Grant funds to the Department. The Department shall have the rights and remedies with respect to unexpended funds as provided by Section 9.

4) Commencement and Completion of the Project; Inspection during Construction or Rehabilitation; Changes.

- a) Grantee shall commence the Project on or prior to September 1, 2021 ("**Commencement Date**").
- b) Grantee shall complete the Project prior to August 31, 2024 ("**Completion Date**").
- c) If the Project involves capital construction or improvements, the Department, its agents, and its employees shall be allowed to inspect the Project during construction and upon completion.
- d) The Office must approve, in writing, all changes to the Application, Project Map, Project Budget, including modifications to the scope of work of the Project, modifications involving carrying out Project activities in a geographic area other than the Proposed Funded Service Area, and modifications to the Completion Date. Such changes will not require a formal amendment to this Agreement, so long as they are approved in writing by the Office and the total amount of the Grant does not change.
- e) Grantee shall ensure that all necessary approvals for the commencement of the Project have been obtained, including all applicable permits and licenses.
- f) On or before the Completion Date, Grantee shall obtain all certifications, licenses, permits, and approvals necessary to operate the Project, and shall otherwise satisfy all requirements necessary to operate the Project.

5) Conditions Precedent to Disbursement of the Grant. The Department shall not disburse the Grant until Grantee has complied with the following conditions:

- a) Grantee has submitted all the Project plans.
- b) Work related to the disbursement has been completed.
- c) Grantee has complied with all other terms and conditions of the Grant as required by the Office to the Office's satisfaction.

6) Other Public Funds; Matching Funds Requirement.

- a) In addition to the Grant, Grantee may (i) be in the process of obtaining written commitments to receive other funds for the Project; (ii) have written commitments to receive other funds for the Project; or (iii) have already received other funds for the Project (collectively, the "**Other Public Funds**"). As Exhibit D to this Agreement, Grantee shall provide a listing of all such Other Public Funds, which describes the source of said funds, and where the source is other than the Grantee, shall also provide a letter from the

source of funds confirming the availability of the funds and setting forth any special conditions or restrictions on their use.

- b) Upon request, Grantee shall provide the Office with information and documentation in forms acceptable to the Office regarding the Other Public Funds. Such information and documentation shall include, but not be limited to, information concerning Grantee's receipt and expenditure of the Other Public Funds.
- c) Grantee is required to contribute a match towards the Project that is a minimum of forty percent (40%) of the total construction cost and a 66.67% equivalent of the Grant amount ("**the Match**"), except as provided below. The match must be available cash and cannot be used to fund operational costs, except as provided in the Guides. Projects that include areas designated as Sustainable Communities and/or Priority Funding Areas are eligible for a reduced match requirement of twenty-five percent (25%) of the total construction cost and one-third (1/3rd) of the Grant amount ("**the Reduced Match**"). Eligibility for the Reduced Match requirement or any other exception to the Match requirement must be confirmed in writing with the Office prior to disbursement of the Grant.
- d) In the event the Office determines, in its sole discretion, that all or any portion of the Other Public Funds are not available, are not going to be disbursed to Grantee for any reason, or that Other Public Funds received by Grantee have not been properly expended, the Department may, in consultation with the Office, declare Grantee in default of this Agreement and exercise its remedies pursuant to this Agreement.

7) Disbursement of the Grant.

- a) After the Effective Date, the Department will disburse Grant funds to Grantee on a reimbursement basis as the Project progresses. Grantee shall submit a request for payment consistent with the procedures set forth in the Program Guides. A request for payment shall identify in detail all expenses incurred for which reimbursement is being sought, and shall have attached copies of the supporting invoices and other documentation of such expenses as required by the Office. A request for reimbursement must be based on the actual expenses incurred by Grantee for eligible, approved grant activities, and Grantee's actual disbursement for eligible, approved grant activities.
- b) Requests for payment should be made allowing at minimum thirty (30) calendar days to receive the Grant funds. The request for payment shall not exceed the eligible costs incurred and approved by the Department. The Department, in its sole discretion, may disburse funds for eligible costs anticipated to be incurred or costs incurred prior to the Effective Date.
- c) The Department shall have the right at any time to request that Grantee provide additional reasonable supporting documentation with any request for payment.
- d) The Department reserves the right not to disburse any Grant funds if, in the Department's determination:
 - i) Grantee has failed to supply a material fact in a request for disbursement;
 - ii) Grantee's disbursement request, when combined with all prior disbursement requests, exceeds the total amount of the Grant;
 - iii) Grantee has used any portion of the Grant for uses or activities other than the Project, or in a manner inconsistent with the terms and conditions of this Agreement, the Act, the Regulations, and the Guides;
 - iv) Grantee is not performing or completing the Project in a manner satisfactory to the Department; or
 - v) Grantee is in default under any other term or condition contained in this Agreement.

8) Records, Inspections and Reports.

This Section shall survive the term of this Agreement.

- a) Records.

- i) Grantee shall maintain accurate financial, management, programmatic and other records of the Grantee, of all transactions relating to the receipt and expenditure of the Grant and administration of the Project (collectively, "**Records**"). The Records shall be in a commercially reasonable form acceptable to the Department. Grantee shall retain the Records for five (5) years following the date the Office approves the Final Report described in Section 8(c) below.
 - ii) Grantee shall make the Grantee's administrative offices, its personnel, whether full time, part time, consultants or volunteers, and the Records available to the Department for inspection upon request, during the term of the Agreement and for a period of five (5) years following the date the Office approves the Final Report. The Grantee shall permit the Office to perform program monitoring, evaluation and audit activities as determined to be necessary, at the discretion of the Office provided such activities are limited to Project monitoring, establishing completion of the Project, ensuring proper expenditure of grant funds, and Grantee is provided fifteen (15) calendar days written notice by the Department.
 - iii) Grantee shall cause to be maintained for the Department's inspection the books, accounts, and records of contractors in connection with the Project for five (5) years past the date of termination of the contractual relationship between the contractor and Grantee.
- b) Inspections. During the term of this Agreement and for a period of up to two (2) years following the Completion Date, Grantee shall permit the Department to monitor the Project to ensure that the Project is being carried out in accordance with the terms of this Agreement.
- c) Reports.
- i) On January 1, April 1, July 1, and October 1 of each year during the term of this Agreement, Grantee shall provide the Office with interim progress reports in a manner and form to be determined by the Office. The interim progress reports shall contain such information as the Office requests, including, but not limited to, work accomplished and problems encountered, past and projected expenditures made against the Project Budget, and benchmarks reached. Grantee shall ensure that each interim progress report is received by the Office no later than ten (10) working days after the due date.
 - ii) Within forty-five (45) calendar days after Grantee completes the Project, Grantee shall submit to the Office a final report (the "**Final Report**") in a manner and form to be determined by the Office that describes the completed Project, the success of the Project, any problems encountered in completing the Project, and such other information as the Office requires. The Final Report shall also contain an expense and revenue summary of the Project including the number of homes and businesses that gained access to broadband facilities, any problems encountered in completing the Project, and such other information as the Department requires. The Final report shall also contain an expense and revenue summary of the Project, certified by the highest fiscal officer of Grantee, that lists all expenditures relating to the Grant. In addition, any completed studies, surveys, reports, or other work products, if applicable, shall be attached to the Final Report. The Grant will not be considered fully closed out until the Final Report has been submitted to, and accepted by, the Office.
 - iii) In addition to the requirements set forth above, Grantee shall provide the Department with such additional records, reports, and other documentation as may be required by the Department or the U.S. Department of the Treasury.

9) Default and Remedies; Termination.

- a) A default shall consist of: (i) the breach by Grantee of any term, condition, covenant, agreement, or certification contained in this Agreement; (ii) the expenditure of Grant funds for any use other than as provided in the Project Budget or in the approved scope of work for the Project; (iii) the failure to commence or complete the Project by the dates set forth in the Agreement, or otherwise unsatisfactory performance or completion of the Project, in the Department's sole determination; (iv) Grantee's bankruptcy, insolvency, or the dissolution or liquidation of Grantee's business organization or assets; (v)

the failure to obtain Other Public Funds if, in the Department's sole discretion, such failure would significantly impact the Project; (vi) a change in Grantee's staffing capacity that adversely affects Grantee's ability to carry out the Project, in the Department's sole discretion.

- b) If a default described in Section 9(a) occurs, the Department shall give Grantee written notice of default, and Grantee shall have thirty (30) calendar days from the date of such notice to cure the default. If Grantee has not cured the default to the satisfaction of the Department by the conclusion of the 30-day period, this Agreement shall terminate at the end of the 30-day period and the Department may demand immediate repayment of the Grant. Notwithstanding the above, upon the occurrence of a default under this Agreement involving Grantee's bankruptcy, insolvency, or the dissolution or liquidation of Grantee's business organization or assets, the Department's right to terminate this Agreement shall be immediate, without a notice and cure period.
- c) Notwithstanding the foregoing notice and cure period set forth in Section 9(b), in the event that the Treasury requires the repayment of any Grant funds, Grantee shall immediately return the Grant funds to the Department.
- d) In the event of termination of the Agreement, whether due to default or otherwise:
 - i) The Department may withhold disbursement of Grant funds and Grantee shall have no right, title, or interest in or to any of the undisbursed Grant funds;
 - ii) The Department may demand repayment from Grantee of any portion of the Grant proceeds that the Department, in its sole discretion, determines were not expended in accordance with this Agreement, plus all costs and reasonable attorneys' fees incurred by the Department in recovery proceedings; and
 - iii) The Department, in its sole discretion, may demand repayment of all Grant funds disbursed to Grantee, plus all costs and reasonable attorneys' fees incurred by the Department in recovery proceedings.
- e) In addition to exercising any or all of the rights and remedies contained in this Agreement, the Department at any time may proceed to protect and enforce all rights available to the Department by suit in equity, action at law, or by any other appropriate proceedings, all of which shall survive the termination of this Agreement.
- f) Grantee agrees to return any remaining proceeds of the Grant to the Department upon termination of the Agreement, whether due to default, completion of the Project, or for any other reason.

10) Grantee's Certifications. Grantee certifies that:

- a) Grantee is a Local Government, a unit of a Local Government, an incorporated organization that is regarded as a partner of the local government, or any other legal entity other than an individual or partnership that is recognized as a partner by the local government.
- b) The acceptance of the Grant and the entering into of the Agreement have been duly authorized, executed, and delivered by Grantee, and are the valid and legally binding acts and agreements of Grantee.
- c) Grantee is duly organized and validly existing under the laws of the jurisdiction of which Grantee is a part, and has all the requisite power and authority to enter into and carry out the transactions contemplated by this Agreement, including, but not limited to, legal capacity and authority to own and operate the Project, to enter into contracts, and to otherwise comply with applicable statutes and regulations.
- d) The representations, statements, and other matters contained in the Application are and remain true and complete in all material respects.

- e) Prior to commencement of the Project, Grantee has obtained or will obtain all federal, state, and local government approvals, permits, and licenses that may be required to accomplish the Project and the scope of work.
 - f) In the past four (4) years, Grantee has not been debarred by any federal, state, or local government entity, nor is Grantee presently subject to, or liable for, any civil claims for non-payment with a potential or realized value of \$30,000.00 or more.
 - g) Grantee is aware it will not be eligible to submit a future application under this Program for another project within the awarded jurisdiction until the construction related to this Grant is complete and the Grant is fully closed out, or two years, whichever is later.
 - h) Grantee shall comply with all applicable laws, regulations, terms, and conditions established by Treasury, the Department and the State with respect to the use of Grant funds.
 - i) Grantee will make a certification prohibiting the use of federal funds for lobbying in the form attached as Exhibit A.
- 11) Liability. Grantee releases the State, the Department, and the Office from, agrees that the State, the Department, and the Office shall not have any liability for, any and all suits, actions, claims, demands, losses, expenses, and costs of every kind and nature, including reasonable attorneys' fees, incurred by, or asserted or imposed against the State, the Department, or the Office, as a result of or in connection with the Project, except for the gross negligence or willful misconduct of the Department or the Office. This Section shall survive the term of this Agreement.
- 12) Indemnification. To the extent permitted by the laws of the State, and subject to appropriations as well as the notice requirements and damages limitations stated in the Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. § 5-301, et seq. (2013 Repl. Vol.) (the “**LGTC**A”) and Md. Code Ann., Cts. & Jud. Proc. §§5-509 and 5-5A-02 (2013 Repl. Vol.), all as amended from time to time, and except in the event of the Department’s negligence or willful misconduct or the negligence or willful misconduct of the Department’s officers, agents, employees, successors and assigns, Grantee shall indemnify and hold harmless, the Department, its officers, agents, employees, successors and assigns against liability for any suits, actions or claims of any character arising from or relating to the performance by Grantee (or its officers, agents, employees, successors or assigns) of any of its rights or obligations under this Agreement. If Grantee is a local government, its chief executive officer hereby agrees to use his or her best efforts to include a request in the Annual Budget and Appropriation ordinance to appropriate funds in the event there is an otherwise indemnifiable cost to the Department under this Section 12.
- 13) Nondiscrimination and Drug and Alcohol Free Workplace; Fair Practices Certification.
- a) Grantee may not discriminate against and hereby certifies that it prohibits discrimination against and will not discriminate against any person on the basis of race, color, religion, ancestry, creed or national origin, sex, marital status, physical or mental handicap, sexual orientation, or age in any aspect of its operations.
 - b) Grantee shall comply with applicable federal, State, and local laws regarding discrimination and equal opportunity in employment, including:
 - i) Titles VI and VII of the Civil Rights Act of 1964, as amended;
 - ii) Title 20 of the State Government Article, Annotated Code of Maryland, as amended;
 - iii) The Governor’s Executive Order 01.01.1989.18 relating to Drug and Alcohol Free Workplaces, and any Department or State regulations adopted or to be adopted to carry out the requirements of that Order;
 - iv) The Americans with Disabilities Act of 1990, as amended; and

v) Grantee will comply with the Drug-Free Workplace Act of 1988 (41 U.S.C. 701, *et seq.*) and any related regulations, insofar as it is applicable to the Grantee.

14) Insurance.

- a) Grantee shall maintain or shall cause to be maintained commercial general liability insurance coverage on the Project both during and after construction, and if necessary, Grantee shall pay the expense of such insurance.
- b) Grantee shall require the general contractor to provide general contractor's insurance coverage for comprehensive public liability, property damage liability/builder's risk, and workers' compensation in the form and amounts required by the Grantee.
- c) Insurance coverages shall be provided by a company that is registered with the Maryland Insurance Administration and authorized to transact business in the State.
- d) To the extent applicable, insurance coverage shall be in force prior to the disbursement of the Grant proceeds and shall contain terms and coverages satisfactory to the Department.
- e) To the extent required by the Department, Grantee shall submit to the Department an ACORD insurance certificate naming the Department and the Grantee as loss payee and additional insured.
- f) To the extent required by the Department, ACORD insurance certificates shall provide for notification to the Department and Grantee prior to Project-related cancellation of any insurance policies.
- g) If Grantee is a Local Government, the insurance requirements contained herein may be satisfied through evidence of a self-insurance program satisfactory to the Department.

15) Notices. All notices, requests, approvals, and consents of any kind made pursuant to this Agreement shall be in writing. Any such communication, unless otherwise specified, shall be deemed effective as of the date it is mailed, postage prepaid, addressed as follows:

- a) Communications to the Department shall be mailed to:

Kenrick Gordon, P.E.
Director, Office of Statewide Broadband
Department of Housing and Community Development
7800 Harkins Road
Lanham, MD 20706
With an electronic courtesy copy to: kenrick.gordon@maryland.gov

- b) Communications to Grantee shall be mailed to:

16) Amendment. Other than as set forth in Section 4(d), this Agreement may not be amended except by a written instrument executed by the Department and Grantee.

17) Execution. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile or by electronic transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or electronic transmission shall be deemed to be their original signatures for all purposes.

- 18) Assignment. This Agreement may not be assigned without the prior written approval of the Department.
- 19) Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior oral and written agreements between the parties hereto with respect to the Grant.
- 20) Governing Law. This Agreement shall be construed, interpreted, and enforced in accordance with the laws of the State without regard to conflict of laws provisions.
- 21) Term of Agreement. Unless sooner terminated pursuant to the terms of this Agreement or extended by an amendment to the Agreement, this Agreement shall be effective as of the Effective Date and shall remain in effect until the Department's receipt and approval of the Final Report.
- 22) Further Assurances and Corrective Instruments. Grantee agrees that it will, from time to time, execute and deliver, or cause to be delivered, such amendments hereto and such further instruments as may be required by the Department to comply with any existing or future State regulations, directives, policies, procedures, and other requirements, or to further the general purposes of this Agreement.
- 23) Delay Does Not Constitute Waiver. No failure or delay of the Department to exercise any right, power or remedy consequent upon default shall constitute a waiver of any such term, condition, covenant, certification or agreement of any such default or preclude the Department from exercising any right, power or remedy at any later time or times.
- 24) Technical Assistance. If the Project is not being completed or performed in a manner satisfactory to the Department, or Grantee has violated a provision of this Agreement, prior to the Department declaring a default, the Department may request that Grantee accept technical assistance the Department feels is necessary for the Project to proceed in a manner acceptable to the Department.
- 25) Department's Signs. If required by the Department, Grantee agrees to display one or more signs identifying the Project as a recipient of financial assistance under the Program if the Department furnishes such sign(s). Grantee shall be responsible for the installation of the signs. In the event that a license, permit, or other permission is required from a local jurisdiction in order to display said signs, Grantee agrees to pay all requisite license or permit fees.
- 26) Notice Regarding Disclosure of Information Relating to the Project. The Department intends to make available to the public certain information regarding the Project and the Grantee. In addition, the Department may be required to disclose information about the Project to the Board of Public Works and the Maryland General Assembly and may desire to disclose such information to other State officials or their staff, local government officials or their staff, and other lenders and funding sources. The Department is also required to disclose information in response to a request for information made pursuant to the Public Information Act, §4-101 et seq. of the General Provisions Article, Annotated Code of Maryland (the "PIA"). Information that may be disclosed to any of the foregoing, including the public, may include, among other things, the name of the Grantee; the name, location, and description of the Project; the date and amount of financial assistance awarded by the Department; the terms of the financial assistance; use of funds; information contained in the application for financial assistance; a copy of the Application; and the sources, amounts and terms of other funding used to complete the Project, including capital contributions from the Grantee. Certain information may be exempt from disclosure under the PIA. Requests for disclosure of information made pursuant to the PIA are evaluated on an individual basis by the Department. If Grantee believes that any of the information it has provided to the Department is exempt from disclosure, Grantee should attach a statement to this Agreement describing the information it believes to be exempt from disclosure and provide an explanation therefor. The Department cannot guarantee non-disclosure of such information but may consider Grantee's statement when responding to a request made pursuant to the PIA.

WITNESS the hands and seals of the Department and the Grantee.

By: _____ (SEAL)

Name: _____

Title: _____

Date

**DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT**

By: _____ (SEAL)

Kenneth C. Holt, Secretary

Date

Approved for form and legal sufficiency,
this _____ day of _____, 20____.

Assistant Attorney General

Exhibits:

Exhibit A – Federal Funding Acknowledgment and Certification Regarding Use of Federal Funds for Lobbying

Exhibit B – Broadband Grant Application Form

Exhibit C – Project Budget

Exhibit D – Other Public Funds

Exhibit E – Project Map

Exhibit F – Certification Regarding Exemption From Standard Minimum Speed Requirements

EXHIBIT A

CERTAIN FEDERAL FUNDING CONDITIONS AND LOBBYING CERTIFICATION

1. 18 U.S.C. 1913 and Section 1352 of P.L. 101-121 require that all prospective and present sub-grantees (this includes all levels of funding) who receive more than \$100,000 in federal funds must submit the form "Certification Against Lobbying." It assures, generally, that recipients will not lobby federal entities with federal funds, and that, as is required, they will disclose other lobbying on form SF-LLL.

2. "Form LLL, Disclosure of Lobbying Activities" must be submitted by those receiving more than \$100,000 in federal funds, to disclose any lobbying of federal entities (a) with profits from federal contracts or (b) funded with nonfederal funds.

3. In addition, federal law requires that:

A) Title 2 of the Code of Federal Regulations (CFR) 200, specifically Subpart D, requires that grantees (both recipients and sub-recipients) which expend a total of \$750,000 in federal assistance shall have a single or program-specific audit conducted for that year in accordance with the provisions of the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156 and Title 2 CFR 200, Subpart D. All sub-grantee audit reports, performed in compliance with Title 2 CFR 200 shall be forwarded within thirty (30) days of report issuance to the Office of Statewide Broadband.

B) All sub-recipients of federal funds comply with Sections 503 and 504 of the Rehabilitation Act of 1973, the conditions of which are summarized in item (C).

C) Recipients of \$10,000 or more (on any level) must include in their contract language the requirements of Sections 503 (language specified) and 504 referenced in item (B). Section 503 of the Rehabilitation Act of 1973, as amended, requires recipients to take affirmative action to employ and advance in employment qualified disabled people. An affirmative action program must be prepared and maintained by all contractors with 50 or more employees and one or more federal contracts of \$50,000 or more.

This clause must appear in subcontracts of \$10,000 or more:

- 1) The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 2) The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- 3) In the event of the contractor's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
- 4) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the

Director, provided by or through the contracting office. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

- 5) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- 6) The contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the [federal] Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

D) All sub-recipients agree to comply with Title VI of the Civil Rights Act of 1964 that they must not discriminate in participation by race, color, or national origin.

E) There may be no discrimination on the basis of age, according to the requirements of the Age Discrimination Act of 1975.

F) National Defense Authorization Act of 2019 (NDAA). The NDAA prohibits the use of federal funds to cover the cost of equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system or critical technology as part of any system. Section 889 of the NDAA defines "covered telecommunications or services" to mean telecommunications and video surveillance equipment or services produced by Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). "Covered telecommunications equipment or services" also includes telecommunications or video surveillance equipment or services provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity that is owned or controlled by the government of a covered foreign country, i.e. The Republic of China.

G) Clean Air Act. The subrecipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The subrecipient agrees to report each violation to DHCD and understands and agrees that the DHCD will, in turn, report each violation as required to assure notification to the appropriate Environmental Protection Agency Regional Office. The subrecipient agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

H) Federal Water Pollution Control Act. The subrecipient agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The subrecipient agrees to report each violation to DHCD and understands and agrees that DHCD will, in turn, report each violation as required to assure notification to the appropriate Environmental Protection Agency Regional Office. The subrecipient agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

**CERTIFICATION PROHIBITING THE USE OF FEDERAL FUNDS
FOR LOBBYING**

Grantee hereby certifies that to the best of its knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. Undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any persons who fail to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

Full Name of Entity Making this Certification

By: _____
Authorized Signature for Entity

Date

Printed Name and Title

EXHIBIT F

Template for ISP Certification

Note: The ISP shall submit the following certification on company letterhead. Failure to provide a certification with sufficient justification to support divergence from the U.S. Treasury's symmetrical 100 up/down standard will result in the ISP being required to comply with the 100 up/down standard in order to be eligible for any match or reimbursement funding.

Project Title: *[Insert title]*

Local Jurisdiction Partner: *[Insert name]*

This is to certify, to the best of undersigned's knowledge, professional experience, and belief, that the above-referenced broadband investment project cannot practically deliver service speeds of 100 Mbps down and 100 Mbps up, by reason of the following (*select at least one*):

- ☐ Geography
- ☐ Topography
- ☐ Excessive Costs

Rationale (*this section must be completed; additional pages may be attached if needed*):

(ISP) understands that if granted an exemption from the 100/100 standard, this project will nonetheless be expected to be designed to deliver, upon project completion, service that reliably meets or exceeds 100 Mbps download and at least 20 Mbps upload speeds, and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds based on future technology advances.

(ISP) further acknowledges that this certification is a material representation of fact upon which reliance was placed by the State of Maryland in approving either its or the above-referenced Local Jurisdiction Partner's application for funding regarding this project.

Authorized signature for ISP

Date

Printed Name and Title